

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

VLADIK BYKOV, Pro Se,

Plaintiff,

vs.

EACCELERATION CORPORATION, d/b/a  
WWW.EACCELERATION.COM; d/b/a  
WWW.STOP-SIGN.COM,

Defendant.

**No. CV05-5251(RBL)**

**DECLARATION OF MARIE R.  
WESTERMEIER IN OPPOSITION  
TO PLAINTIFF'S MOTION TO  
REOPEN**

I, Marie Westermeier, being over the age of eighteen (18) years and competent to testify to the matters herein, declare and state as follows:

1. I am one of the attorneys representing Defendant, EACCELERATION CORPORATION in this matter.

2. Throughout the course of litigation in this case, Plaintiff has acted unreasonably and uncooperatively, resulting in unnecessary expense for Defendant. After I drafted a simple joint status report and emailed it to the Plaintiff, he made a series of changes to the document, and sent dozens of new iterations to me for my approval, often in rapid succession. When I asked him to please redline his changes so that I could quickly identify the changes, he refused. This forced me to review each draft and compare it to my original. This kind of behavior

1 resulted in needless time on my part and extra expense to my client, and it characterized my  
2 interactions with the Plaintiff from the beginning of the case.

3 3. At the outset of the case, Plaintiff propounded excessive and inappropriate  
4 discovery, which required Defendant to seek and obtain protective orders. Plaintiff also insisted  
5 on taking depositions at his apartment in Redmond, which resulted in a protective order requiring  
6 that all depositions take place in my office. Even after the protective orders were in place,  
7 Plaintiff moved to compel answers to discovery requests which had been stricken, and he  
8 continued to attempt to note depositions in Redmond. He also propounded more discovery  
requests.

9 4. On three occasions, Defendant spent considerable time and energy to make  
10 witnesses available to Plaintiff to be deposed. Each time, the Plaintiff failed to follow through  
11 with the depositions either by failing to confirm the dates or by failing to appear on the dates that  
12 had been set for depositions.

13 5. On April 3, 2006, Plaintiff failed to appear in my office for his own properly  
14 noted deposition. On April 10, the Court granted Defendant's Second Motion for Protective  
Order.

15 6. On May 2, 2006, the Court granted Defendant's Motion for Partial Summary  
16 Judgment dismissing claims related to the employment testing. On May 4, Defendant filed a  
17 second Motion for Partial Summary Judgment on Remaining Claims. The Plaintiff sought and  
18 obtained an extension of time to file his opposition, and the hearing was renoted to June 23,  
19 2006. In the Court's Order granting Plaintiff's extension of time, the Court warned Plaintiff that  
20 further discovery abuses would result in sanctions up to and including dismissal.

21 7. Plaintiff has offered to dismiss the case on two prior occasions, but changed his  
22 mind each time. The first time that Plaintiff contacted me about dismissing the case was at the  
23 end of May 2006. Defense witnesses were scheduled to be deposed on Tuesday, May 30, 2006  
24 and on June 6, 2006. On Friday, May 26, I traveled to Poulsbo to meet with the May 30<sup>th</sup>  
witnesses to prepare for their depositions. That same day, which was the Friday before

1 Memorial Day weekend, Plaintiff sent an email at 4:58 p.m., which said in pertinent part: "I will  
2 be unable to take depositions because it will be too stressful for me. I also have decided to  
3 dismiss the whole case because of too much stress." True and correct copies of those emails are  
4 attached as Exhibit 1.

5 8. After having canceled the depositions and having communicated his intention to  
6 dismiss the case, the Plaintiff apparently changed his mind. He appeared at my office on May  
7 30, 2006, stating that he was ready to take the depositions that he had canceled.

8 9. Also on May 30, 2006, the Court issued an order that required the Plaintiff to  
9 submit to a deposition before he was permitted to take depositions of Defendant's witnesses.  
10 Based on that order, the parties agreed to take Plaintiff's deposition on June 9, 2006, and to  
11 reschedule defense witnesses after that.

12 10. On May 31, 2006, Defendant filed a Motion to Dismiss Complaint, for Sanctions  
13 and for Relief from the obligation to produce witnesses based on Plaintiff's failure to attend his  
14 own properly noted deposition. The noting date for the motion was June 16, 2006.

15 11. While the motion to dismiss and for sanctions was pending, Plaintiff contacted me  
16 a second time expressing his wish to dismiss the complaint. He wanted to know if I would agree  
17 to dismiss the complaint without costs to either party. His primary concern seemed to be to  
18 make sure that he would not be responsible for any costs. Given the fact that we had two  
19 motions pending, including a motion for sanctions, we were tempted to wait for a ruling on the  
20 merits and for an order imposing sanctions, after which we would pursue an action against him  
21 for filing a frivolous lawsuit. Ultimately, we decided to agree to dismiss the case to limit any  
22 further costs and fees to eAcceleration.

23 12. On June 2, 2006, I emailed a stipulation and order of dismissal to the Plaintiff  
24 with my electronic signature, and I gave him my permission to file it. Rather than simply  
signing and filing it, Plaintiff revised the stipulation to dismiss without prejudice. Four minutes  
later, he emailed another version, without identifying the change. I refused to agree to the  
stipulation unless the dismissal was with prejudice. At that point, the Plaintiff claimed that I was

1 “pressuring him,” and he refused to file the stipulation to dismiss. True and correct copies of  
2 those emails are attached as Exhibit 2.

3 13. After having changed his mind a second time about dismissing the case, Plaintiff  
4 then sent an email over the weekend asking if Defendant would pay \$30,000 to settle the case.  
5 True and correct copies of those emails are attached as Exhibit 3. I did not respond. Finally, two  
6 days before his deposition, at 10:15 p.m. on Wednesday, June 7, 2006, Plaintiff filed his  
7 “stipulated” motion to dismiss, which he had redrafted on his own pleading paper. He cut and  
8 pasted my signature from my proposed stipulation and order and filed it with the Court.  
9 Although I found it objectionable that he cut and paste my signature on a document I had not  
approved, I did not challenge it in the interest of putting an end to the case once and for all.

10 14. At no time did I place pressure on the Plaintiff to dismiss his case. I believed that  
11 our motion for summary judgment was strong and that the case was likely to be dismissed on the  
12 merits, and that the Plaintiff should be sanctioned for having filed a frivolous lawsuit.

13 15. Defense costs for eAcceleration in this case to date have exceeded \$60,000,  
14 largely due to Plaintiff’s excessive discovery requests and unreasonable and uncooperative  
behavior.

15 I declare under penalty of perjury under the laws of the State of Washington that the  
16 foregoing is true and correct to the best of my knowledge and belief.

17 Executed at Seattle, Washington, this 9 day of October 2006.

18  
19   
MARIE R. WESTERMEIER

20  
21  
22 w:\wdclient\1330\00013\mm637493.doc

**Marie R. Westermeier**

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**From:** Vladik [vladik@usa.net]  
**Sent:** Friday, May 26, 2006 4:15 PM  
**To:** Marie R. Westermeier  
**Subject:** Re: Dismissal

Do you agree to stipulate to dismissal? - Without costs?

Vladik

On May 26, 2006, at 3:27 PM, Marie R. Westermeier wrote:

Nathan and Jenn are scheduled to be in my office on Tuesday. You have my permission to move to dismiss today. If you do not file today, and you fail to take the depositions on Tuesday, I will move for sanctions and for dismissal.

-----Original Message-----

**From:** Vladik [mailto:vladik@usa.net]  
**Sent:** Fri May 26 15:11:16 2006  
**To:** Marie R. Westermeier  
**Subject:** Dismissal

Hello,

If you like, lets communicate. I am ready to dismiss case.

Vladik

**Marie R. Westermeier**

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**From:** Vladik [vladik@usa.net]  
**Sent:** Friday, May 26, 2006 4:58 PM  
**To:** Marie R. Westermeier  
**Subject:** Dismissal and Cancellation of Depositions

Marie Westermeier,

I will be unable to take depositions because it will be too stressful for me. I also have decided to dismiss the whole case because of too much stress. If you stipulate to a complete dismissal without costs, I will file a stipulated dismissal with noting day of today. Write me an e-mail or a letter in PDF format so that I can file it with the motion.

Thanks,  
Vladik

**Marie R. Westermeier**

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**From:** Jennifer L. Bonanno  
**Sent:** Friday, June 02, 2006 11:21 AM  
**To:** 'Vladik'  
**Cc:** Marie R. Westermeier  
**Subject:** (1330.013) Bykov v. eAcceleration

Attached, in pdf format, is the Stipulation and Order of Dismissal which has been signed by Marie Westermeier. In addition, I have attached a signature page in Word for you to sign, pdf and attach to the Stipulation. The entire document can then be filed with the court.



**Stipulation and Order of Dismissal (MM6, Bykov Signature Page)**

Jeni Bonanno  
Legal Assistant  
Bennett Bigelow & Leedom  
1700 Seventh Avenue, Suite 1900  
Seattle, WA 98101  
Telephone: (206) 622-5511  
Fax: (206) 622-8986  
[www.bblaw.com](http://www.bblaw.com)

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**Marie R. Westermeier**

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**From:** Vladik [vladik@usa.net]  
**Sent:** Friday, June 02, 2006 11:49 AM  
**To:** Marie R. Westermeier  
**Cc:** Jennifer L. Bonanno  
**Subject:** My version of joint stipulation.



**Stipulated  
tion to Dismiss**

Ok. Here is my version.



**Marie R. Westermeier**

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**From:** Vladik [vladik@usa.net]  
**Sent:** Friday, June 02, 2006 11:53 AM  
**To:** Marie R. Westermeier  
**Cc:** Jennifer L. Bonanno  
**Subject:** Updated version



**Stipulated  
tion to Dismiss**

Hi,

I just added something to the stipulation

Vladik

**Marie R. Westermeier**

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**From:** Vladik [vladik@usa.net]  
**Sent:** Monday, June 05, 2006 12:30 AM  
**To:** Marie R. Westermeier  
**Subject:** Settlement Issue

Please explain to Clinton that with \$30,000 I will be able to get mental care. No money for mental care means bad things to me. He told me at one point that he wanted to help me.

Thank you,  
Vladik

**Marie R. Westermeier**

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**From:** Vladik [vladik@usa.net]  
**Sent:** Monday, June 05, 2006 12:05 AM  
**To:** Marie R. Westermeier  
**Subject:** Settlement?

To: Marie R. Westermeier,

Will Clinton settle for \$30,000?

Vladik